SCAN NATOA
STATES OF CALIFORNIA
AND NEVADA CHAPTER
NATIONAL ASSOCIATION
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OFFICERS AND ADVISORS
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April 10, 2013

Hon. Chris Holden
California State Assembly
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0041

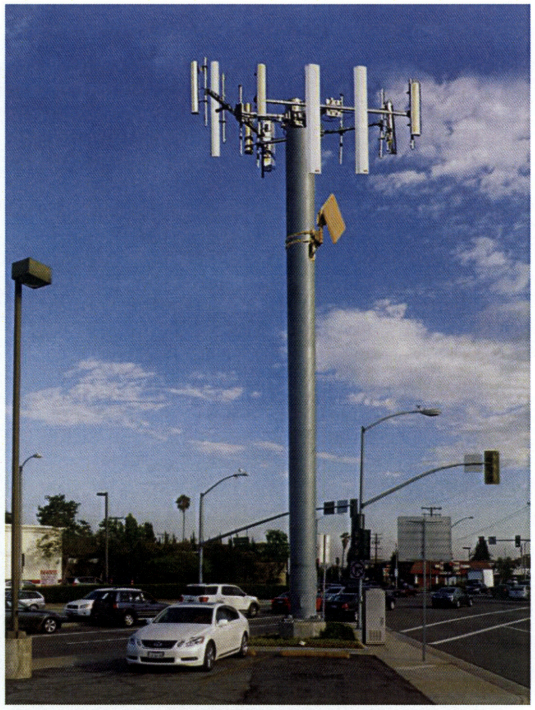
Subject: AB 162 (Broadband Expansion Act)

Dear Assemblymember Holden,

The purpose of this letter is to express three significant concerns SCAN has with AB 162. As a matter of background, SCAN is a non-profit professional organization serving local governments and regional authorities in the development, regulation, and administration of telecommunications facilities and services. SCAN represents the interests of over 300 members of cities and counties throughout California and Nevada, and several SCAN members work and/or reside within District 41.

Below is just one example of a before and after photo of a co-located facility that might be covered by the bill, with only 45 days for a city or county to process the co-location application, without any discretionary review, and without any opportunity for any meaningful public input on suggested changes from city or county staff, such as changes to the size, shape, color, or "stealthing" of the co-located antennas or the new (larger) pole.

Existing camouflaged site



Permitted modification under AB 162 (larger pole, additional antennas, and failure to blend with surroundings)

With the perspective of the above photos, SCAN presents the following three concerns with AB 162.

Issue 1 – the 45-day "shot clock." The bill prevents any meaningful opportunity for a city or county to consider the design and/or public safety aspects of, or for the public to comment on a significant number of wireless facilities, given the 45-day "deemed granted" shot clock of the bill, and the required ministerial permit process. The bill effectively demands that a city or county do all of the following things within the 45-day period: (1) review the application; (2) provide staff comments to the carrier on the application; (3) provide notice to property owners near the site of the application, consistent with traditional land use permit applications; (4) receive written public comment; and (5) if necessary, hold a public hearing.

Co-located wireless facilities may need to be reviewed not only for compliance with local design requirements, but also public safety considerations, such as wind and dead-loading, foundation requirements, and backup generator safety. These engineering reviews are not trivial, perfunctory reviews.

The purpose of the entitlement process, even for wireless facilities, is not something where the carrier, the agency, and the public can "go through the motions." The intent is to develop a project that allows the carrier to achieve its coverage needs, while still allowing the

local government to ensure the wireless facility complies with applicable land use regulations. This process cannot be satisfied with any arbitrary "shot clock," much less a 45-day shot clock.

Issue 2 – the "deemed granted" approval process. Neither Congress (in the Federal Telecommunications Act (47 U.S.C. § 332(c)(7)(B)(iii) and (v)), nor the FCC (through the 2009 Shot Clock order) found it necessary to create a "deemed granted" regime for any wireless facilities, for good reason. A "deemed granted" regime creates absolutely no incentive for carriers to cooperate with cities and counties that legitimately require additional time beyond the 45-day period to process an application. All a carrier would need to do is decline an extension, and then demand a permit when the 45-day period expires. Such a requirement hardly respects the fact that co-located wireless facilities are not a "one size fits all" installation, and some applications require additional time to process, for the reasons stated above. The "deemed granted" regime has no place in this bill.

Issue 3 – ambiguity with existing law. The bill creates a second permitting process for co-located wireless facilities, for no particular reason. This bill only creates an overlapping and confusing set of permitting requirements for co-located wireless facilities, when considered in conjunction with Government Code section 65850.6, which already requires a ministerial permitting process for certain co-located wireless facilities.

We hope that your office will review these issues with AB 162, and we offer our assistance in that regard.

Sincerely,

William M. Marticorena, Esq.
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Partner, Rutan & Tucker, LLP